IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 3370 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HARISHBHAI GOKULDAS MODI & 1 - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR KB ANANDJIWALA for Applicant(s) : 1 - 2.
Mr. MR Mengdey, Addl.PUBLIC PROSECUTOR for Respondent(s) : 1,
MR TEJAS P SATTA for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 22/06/2007
ORAL JUDGMENT

Rule. Shri MR Mengdey, learned APP waives service of Rule on behalf of the State. Shri Satta, learned advocate waives service of

Rule on behalf of respondent No.2. With the consent of the learned advocates appearing on behalf of the parties, the matter is taken up for final hearing today.

2. Shri KB Anandjiwala, learned advocate appearing on behalf of the petitioners does not press the present application qua petitioner No.1 at this stage as at present the investigation is pending. So far as the petitioner No.2 is concerned, Shri Anandjiwala, learned advocate appearing for the petitioner No.2 has submitted that there is no role attributed to the petitioner No.2 in the FIR and in fact even as per the averments and the allegations in the complaint the operation was performed by the petitioner No.1 and only because the petitioner No.2 happens to be wife of petitioner No.1 she has been roped and she has been shown as accused in the complaint. Shri Satta, learned advocate appearing on behalf of respondent No.2, original-complainant is not in position to satisfy this

Court as to any role attributable to the petitioner No.2. Even Shri Mengdey, learned APP is also not in position to satisfy this Court whether there are any allegations against the petitioner No.2 or not. On bare reading of the complaint it appears that the allegations with regard to performing the operation, negligence etc., are against the petitioner No.1 and there are no allegations against the petitioner No.2 as to whether she has taken any active participation in performing the operation by the petitioner No.1 and/or in any way the petitioner No.2 was connected. Under the circumstances, when no role has been attributed to the petitioner No.2 which is not disputed by Shri Satta, learned advocate appearing on behalf of respondent No.2, original-complainant the complaint against the petitioner No.2 requires to be quashed. Considering the above, the complaint against the petitioner No.2 is hereby quashed and set aside. Rule is made absolute so far as petitioner No.2 is concerned. Rule is discharged so far as petitioner No.1 is

concerned.

[M.R. Shah, J.]

rmr.